



## Employee Benefits

*Consulting and Administration to Fit Your Organization's Needs*



# For Your Benefit

## **Analysis of Marsh & McLennan Charges**

by Gary Kushner, SPHR, CBP  
President, Kushner & Company

In response to concerns resulting from the lawsuit brought against Marsh & McLennan by New York Attorney General Eliot Spitzer, we offer this brief analysis of the charges, possible implications and appropriate responses your organization may want to consider.

Essentially, the charges allege that Marsh & McLennan, the world's largest commercial insurance brokerage firm, routinely committed fraud against their clients. This was allegedly perpetrated by not only rigging the bidding process to favor the incumbent insurer, but also by accepting "contingency fees" and other kickbacks from insurers to their clients' detriment, in essence receiving a quote from an insurance carrier at one level and then marking it up by 10 percent or more before presenting it to the client. According to the charges, Marsh & McLennan not only received these payments but the regular commissions as well. Individuals from three large insurers have already pled guilty to charges of rigging bids. More criminal charges are expected.

If the charges against Marsh & McLennan are proven true or if these practices are found to be common in other insurance brokerage firms, the implications are significant.

According to the New York Times, Eliot Spitzer—who is also pursuing reports of payouts from other insurers to unscrupulous brokers—says the practice may have increased coverage costs for "tens of millions of individuals."

Understandably, most employers have assumed they were receiving the best competitive prices on their insurance quotes from their brokers. Employers have routinely trusted their agents and/or brokers to provide the best possible coverage at the most reasonable rates. In an era where many employee benefit costs are already rapidly increasing, those same organizations and their employees expect that a fair, open, and competitive process be followed each and every time bids are taken to the market.

While the investigations and courts proceed, there are several appropriate responses which your organization may wish consider.

First, require that all benefit providers disclose any and all forms of compensation they receive. These would include not just fees and commissions but all payments by insurers, plans, or others for referring business to them. This request for information from the brokerage firm and individual agent should be in writing, and should specifically request a complete written response. Of course brokerage firms and agents need to be fairly compensated—that is not the issue. Rather, your organization should have full and complete disclosure of all forms of compensation that the broker and agent receive for the services they provide. With that information in hand, you and your organization can make a fully informed decision.

Second, specifically inquire as to whether the brokerage firm or agent receives any form of contingency compensation for directing a block of business to any insurer. Again, require a written response to your inquiry.

Last, request in writing an assurance that the brokerage firm and agent are fairly and ethically soliciting and reporting complete, unbiased competitive bids on all of the benefit plans your organization is purchasing. Insist upon seeing the actual quote from the insurer.

For the record, Kushner & Company does not now, nor has it ever collected any form of commissions, finder's fees, or any other form of compensation from any provider of services to our clients. Whenever any form of compensation has been offered to us, we've requested that those dollars be passed along to our clients—dollar-for-dollar—in the form of cost reductions.

In conclusion, if you have any questions or concerns on this very important issue, as always please do not hesitate to contact us here at Kushner & Company. We stand ready to assist you and your organization.

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